

# **EXHIBIT 7**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

CHRISTOPHER CORCORAN, et al.

Plaintiff,

vs.

No. 15-CV-03504-YGR

CVS PHARMACY, INC.,

Defendant.

**UNREDACTED VERSION  
OF DOCUMENT -  
TO BE FILED UNDER SEAL  
(L.R. 79-5(d)(1)(D))**

VIDEOTAPED DEPOSITION OF WILLIAM JOHN BARRE

Thursday, November 17, 2016

12:59 P.M.

12670 High Bluff Drive

San Diego, California

Reported by:

Harry Alan Palter

CSR No. 7708, Certified LiveNote Reporter

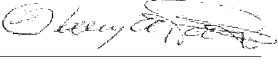
1	APPEARANCES:	Page 2
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7	MARKED	DESCRIPTION
8	Defense Exhibit 299	CVS Pharmacy, Inc.'s
9		Amended Notice of
10		Videotaped Deposition
11		of Bill Barre
12		
13	Defense Exhibit 300	MedImpact MedCare
14		Pharmacy Network
15		Agreement, CVSC-0333819
16		through CVSC-0333863
17		
18	Defense Exhibit 301	Salesforce document,
19		MEDIMPACT000001 through
20		MEDIMPACT000003
21		
22		
23		
24	Plaintiff Exhibit 606	TP Contracts Indexing
25		Form, CVSC-0006048
		through CVSC-0006081

<p style="text-align: right;">Page 22</p> <p>1 A It would be the agreement we would have</p> <p>2 signed per that date. Previously, we may have had</p> <p>3 other national agreements of some type. But to this</p> <p>4 date, that would be, yes.</p> <p>5 Q And I'd like you to turn to page 20 of</p> <p>6 the agreement. And that is the Bates label ending</p> <p>7 in -838.</p> <p>8 A Hmm-hmm.</p> <p>9 Q And about two-thirds of the way down the</p> <p>10 page is a definition of, "Usual and customary or</p> <p>11 U&amp;C." Do you see that?</p> <p>12 A Yes, I do.</p> <p>13 Q And it says, "Usual and customary or U&amp;C,</p> <p>14 means the lowest price member pharmacy would charge</p> <p>15 to a cash-paying customer at that location for an</p> <p>16 identical prescription on that day. This price must</p> <p>17 include any applicable discounts, promotions, or</p> <p>18 other offers to attract customers."</p> <p>19 Did I read that correctly?</p> <p>20 A Yes.</p> <p>21 Q And this would be the definition of "U&amp;C"</p> <p>22 that you and CVS agreed to as of the date of this</p> <p>23 contract; correct?</p> <p>24 A Yes.</p> <p>25 Q Are you familiar with the term "cash</p>	<p style="text-align: right;">Page 24</p> <p>1 price. It would have been the price of that</p> <p>2 particular card program separate.</p> <p>3 BY MS. McNAMARA:</p> <p>4 Q And why not? Why wouldn't cash discount</p> <p>5 cards be included in this definition?</p> <p>6 A Our view of usual and customary is as</p> <p>7 it's defined in this agreement here (Indicating);</p> <p>8 someone that has walked off the street, has not</p> <p>9 shown any other type of processing or adjudication</p> <p>10 associated with that card.</p> <p>11 Passively, what would they be charged for</p> <p>12 that drug without presenting any type of a -- other</p> <p>13 form of either payment or form of a cash discount</p> <p>14 card that would provide some type of a different</p> <p>15 adjudication process.</p> <p>16 So from a passive basis, you or myself or</p> <p>17 anybody walking off the street -- what would that</p> <p>18 price of that product be at that store at that given</p> <p>19 point in time?</p> <p>20 Q Got it.</p> <p>21 And did your understanding of whether</p> <p>22 cash discount cards would be included in this U&amp;C</p> <p>23 definition ever change?</p> <p>24 A No.</p> <p>25 Q Do you recall that back in 2006, Walmart</p>
<p style="text-align: right;">Page 23</p> <p>1 discount card"?</p> <p>2 A Yes.</p> <p>3 Q What is a "cash discount card"?</p> <p>4 A A "cash discount card" is a card that a</p> <p>5 consumer brings to a pharmacy and typically receives</p> <p>6 a discount to that card compared to the pharmacy's</p> <p>7 usual and customary price.</p> <p>8 Q And when you say, "discount compared to</p> <p>9 the pharmacy's usual and customary price," what do</p> <p>10 you mean?</p> <p>11 A We would negotiate a formula for pricing</p> <p>12 drugs for cash discount business with a pharmacy or</p> <p>13 a chain of pharmacies. And the claims would price</p> <p>14 at those contracted, calculated rates or the</p> <p>15 pharmacy's usual and customary, whichever is a lower</p> <p>16 price.</p> <p>17 Q And at the time you executed this</p> <p>18 agreement with CVS, did you understand the</p> <p>19 definition of "usual and customary" to require CVS</p> <p>20 to submit cash discount card prices as usual and</p> <p>21 customary?</p> <p>22 MR. GILMORE: Objection. Form.</p> <p>23 Foundation.</p> <p>24 THE WITNESS: No. We would not have</p> <p>25 considered that to be their usual and customary</p>	<p style="text-align: right;">Page 25</p> <p>1 started to offer a list of generic drugs for \$4?</p> <p>2 A Yes.</p> <p>3 Q And what do you remember about that</p> <p>4 offering?</p> <p>5 A Well, that Walmart -- it was</p> <p>6 approximately 400 drugs, almost all generic. I</p> <p>7 don't think there was any brand associated with</p> <p>8 that. It was a 30-day supply. And they were</p> <p>9 putting that list together and offering that as</p> <p>10 their usual and customary price -- a \$4 price tag --</p> <p>11 for those particular drugs.</p> <p>12 Q And do you recall that they were offering</p> <p>13 that price to anybody who walked in off the street</p> <p>14 and purchased the drug?</p> <p>15 A We viewed that as Walmart's usual and</p> <p>16 customary price. Again, it was a passive</p> <p>17 experience. A person would not have to show any</p> <p>18 type of ID card, or discount card or insurance card</p> <p>19 or anything else to obtain that price.</p> <p>20 Q And do you recall in the 2007-2008</p> <p>21 timeframe other pharmacies coming out with</p> <p>22 membership programs offering special pricing on</p> <p>23 generics?</p> <p>24 A Yes.</p> <p>25 Q And tell me what you remember about those</p>

<p style="text-align: right;">Page 26</p> <p>1 programs.</p> <p>2 A What I recall is that several pharmacy</p> <p>3 chains offered a membership program to which -- may</p> <p>4 or may not have had a fee applied to -- and it was a</p> <p>5 card specific to that pharmacy.</p> <p>6 So, in other words, if you had a CVS</p> <p>7 program, it wouldn't work at Walgreens, by way of</p> <p>8 example -- and because a person had actively joined</p> <p>9 that program, they were eligible to either get</p> <p>10 either 30-day programs or some 90-day programs and</p> <p>11 others -- prescriptions for those day supplies at a</p> <p>12 discounted price.</p> <p>13 Q And did you view those programs as</p> <p>14 different from the Walmart \$4 offering?</p> <p>15 A Yes.</p> <p>16 Q And why was that?</p> <p>17 A Again, it's this passive vs. active</p> <p>18 scenario.</p> <p>19 In a passive model, the Walgreens usual</p> <p>20 and customary was obtained by a consumer without</p> <p>21 taking any action on their part.</p> <p>22 In the example of a club program -- or</p> <p>23 however you want to refer to these programs -- a</p> <p>24 person had actively joined. They either registered</p> <p>25 or gave their name and information, but they were</p>	<p style="text-align: right;">Page 28</p> <p>1 A The --</p> <p>2 MR. GILMORE: Objection. Form.</p> <p>3 Foundation.</p> <p>4 THE WITNESS: The membership program was</p> <p>5 a program that a consumer actively enrolled in, as</p> <p>6 if they were joining -- and that was different than</p> <p>7 a usual and customary, which we viewed as what would</p> <p>8 be that -- what would be that price point if a</p> <p>9 consumer was not taking any action, simply coming to</p> <p>10 the pharmacy and presenting their prescription</p> <p>11 without any other insurance card or discount program</p> <p>12 or anything of that nature; what would that price</p> <p>13 calculate -- what would they choose to charge for</p> <p>14 that price?</p> <p>15 BY MS. McNAMARA:</p> <p>16 Q And do you recall CVS having a membership</p> <p>17 program?</p> <p>18 A Yes.</p> <p>19 Q And what do you recall about that</p> <p>20 program?</p> <p>21 A I remember the program came out -- I</p> <p>22 believe the program was really specifically for</p> <p>23 90 days' medications at the time. I believe they</p> <p>24 had some type of charge associated with the program,</p> <p>25 if I remember correctly. And the program began</p>
<p style="text-align: right;">Page 27</p> <p>1 connected to a specific type of program that an</p> <p>2 individual not enrolled in that program would not be</p> <p>3 eligible to receive that pricing model.</p> <p>4 Q And you mentioned you recalled some</p> <p>5 programs having a fee and others not having a fee.</p> <p>6 Was the fee a determining factor for you</p> <p>7 or was it the active-passive distinction that you've</p> <p>8 been articulating?</p> <p>9 A It was the active --</p> <p>10 MR. GILMORE: Objection. Form,</p> <p>11 foundation.</p> <p>12 THE WITNESS: Excuse me.</p> <p>13 It was the -- it was the active vs.</p> <p>14 passive.</p> <p>15 In passive, again meaning Walmart, a</p> <p>16 person took no action and received that opportunity.</p> <p>17 As far as a CVS or Walgreens or any other</p> <p>18 type of program of these "club programs" as we</p> <p>19 generically referred to them as, the individual had</p> <p>20 made a decision to actively become part of such</p> <p>21 program. So we viewed that as different.</p> <p>22 BY MS. McNAMARA:</p> <p>23 Q And did you view those -- well, and tell</p> <p>24 me how you viewed membership programs with respect</p> <p>25 to the pharmacy's usual and customary price.</p>	<p style="text-align: right;">Page 29</p> <p>1 somewhere in the 2007 or '8 range. I can't exactly</p> <p>2 remember when, but it sounds about right timewise.</p> <p>3 Q And CVS's program was also an</p> <p>4 enrollment-based program, to your recollection?</p> <p>5 MR. GILMORE: Objection. Form.</p> <p>6 Foundation.</p> <p>7 THE WITNESS: Yes. We saw it as an</p> <p>8 enrollment program.</p> <p>9 BY MS. McNAMARA:</p> <p>10 Q And how did you learn about CVS's</p> <p>11 program?</p> <p>12 A Don't remember exactly the specific</p> <p>13 event, but it was generally known in the industry</p> <p>14 that CVS was offering such programs. So whether --</p> <p>15 some type of chain drugstore publication or whether</p> <p>16 some type of industry information piece -- I'm sure</p> <p>17 that's how we found out about it.</p> <p>18 Q And do you recall when you learned about</p> <p>19 it?</p> <p>20 A Somewhere right around the beginning that</p> <p>21 it started. So in the 2007-'8 range, but not</p> <p>22 specifically.</p> <p>23 Q And do you recall discussing membership</p> <p>24 programs with other MedImpact employees in your</p> <p>25 group?</p>

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1	DECLARATION UNDER PENALTY OF PERJURY	1	STATE OF CALIFORNIA )
2		2	)
3	I, William John Barre, do hereby certify under	3	COUNTY OF SAN DIEGO )
4	penalty of perjury that I have read the foregoing	4	
5	transcript of my deposition taken on November 17, 2016;	5	
6	that I have made such corrections as appear noted on the	6	I, Harry A. Palter, a Certified Shorthand
7	Deposition Errata Sheet, attached hereto, signed by me;	7	Reporter of the State of California, do hereby certify:
8	that my testimony as contained herein, as corrected, is	8	That prior to being examined, the witness in
9	true and correct.	9	the foregoing proceedings was by me duly sworn to
10		10	testify to the truth, the whole truth, and nothing but
11	Dated this ____ day of _____, 20____, at	11	the truth;
12	_____, California.	12	That said proceedings were taken before me at
13		13	the time and place therein set forth and were taken down
14		14	by me in shorthand and thereafter transcribed into
15		15	typewriting under my direction and supervision;
16	_____ William John Barre	16	I further certify that I am neither counsel
17		17	for, nor related to, any party to said proceedings, nor
18		18	in any way interested in the outcome thereof.
19		19	In witness whereof, I have hereunto
20		20	subscribed my name.
21		21	Dated: November 18, 2016
22		22	
23		23	
24		24	HARRY ALAN PALTER
25		25	CSR No. 7708

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1	DEPOSITION ERRATA SHEET
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25	_____ William John Barre
	_____ Dated